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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,680	04/27/2007	Fred A. Vaccari	1367U101	4819
3176 GEORGE A. ROLSTON 45 SHEPPARD AVE EAST SUITE 900 TORONTO, ON M2N5W9 CANADA	7590 03/05/2012		EXAMINER SZMAL, BRIAN SCOTT	
			ART UNIT 3736	PAPER NUMBER
			MAIL DATE 03/05/2012	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/597,680

Applicant(s)

VACCARI ET AL.

Examiner

Brian Szmaj

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2012.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1,2 and 8-18 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1,2 and 8-18 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 03 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-CB00)
Paper No(s) Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s) Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 2 and 8-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claims 1 and 10, the functional language in the claims can be reasonably interpreted as method steps within apparatus claims for performing a specific function of the claimed units or sections. See the Power Point presentation from the USPTO website under **Home Page >> Patents >> Patent Laws, Regulations, Policies & Procedure >> Examination Policy >> Examination Guidance & Training Materials**: http://www.uspto.gov/patents/law/exam/112_suppl_exam_2011.ppt (slides 29, 33 and 34 for guidance). See also Federal Register / Vol. 76, No. 27 / Wednesday, February 9, 2011 / Notices/ pages 7162-7175.

Regarding Claim 11, the metes and bounds of the claim are not clearly set forth. The preamble, while first disclosing a method of warning a person of an unsafe position, also discloses the structure of the safety device. It is unclear if the Applicant is attempting to claim the structure of the safety device in the method claim preamble. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 8-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Socci et al (5,916,181) in view of Horiuchi et al (JP 2000-55656 A).

Socci et al disclose head gear for detecting head motion and position and further disclose a position sensor for sensing the position of the head of the user and providing a signal indicative of the sensed head position; a processor connectable to the position sensor for receiving the signal indicative of the sensed head position, the processor determining if the head of the user has been in an unsafe position for a first continuous period of time and producing a signal qualifying the determination; an indicator connectable to the processor for receiving the signal qualifying the determination and subsequently indicating that the head of the user is in an unsafe position; an activator for switching the electronic safety device between an active mode, in which the electronic safety device operates to monitor of the head position of the user, and a standby mode, in which the electronic safety device does not monitor of the head position of the user; a piezo element operable to create an alarm; the indicator includes at least one of an audible indicator, a visual indicator and a vibration indicator; the processor further determines if the head of the first participant has been in an unsafe position for a second continuous duration of time, which is longer than the first continuous duration of time, and producing a signal for the indicator to stop indicating if

the head has been in the unsafe position for the second continuous duration of time (the auto off feature of Socci et al would turn off the device if the processor has determined the device has not moved in a predetermined period of time); sensing an unsafe head tilt of the first participant; determining if the sensed unsafe head tilt has been maintained for at least a first continuous duration of time; indicating to one of the first and second participants that the head tilt of the first participant is unsafe; stopping the indicating after a second continuous duration of time (the auto off feature of Socci et al would turn off the device if the processor has determined the device has not moved in a predetermined period of time); stopping the sensing, determining and indicating after a second continuous duration of time (the auto off feature of Socci et al would turn off the device if the processor has determined the device has not moved in a predetermined period of time); re-starting the sensing, determining and indicating after a third continuous duration of time (the device goes into a "sleep" mode if the processor determines the device is not in use; one of ordinary skill in the art would recognize a device in "sleep" mode can be awakened, thus restarting the measurement); determining whether or not the electronic safety device is in use; maintaining an active mode for the electronic safety device, if it is determined that the electronic safety device is in use; and determining if the device is in motion. See whole document, in particular, Column 3, lines 25-35; Column 4, lines 10-27; Column 6, lines 9-10 and 49-50; Column 7, lines 22-24; Column 8, lines 20-34; Column 10, lines 19-Column 11, lines 45 disclose hockey and football helmets; and Column 12, lines 1-13 disclose skating helmets.

Socci et al, while disclosing the use of a position sensor, however fail to disclose the use of a photo interrupter incorporated in the position sensor and being operable to sense a tilt of the sensor beyond a threshold angle relative to the vertical.

Horiuchi et al disclose the use of a tilt sensor and further disclose a photo interrupter incorporated in the position sensor and being operable to sense a tilt of the sensor beyond a threshold angle relative to the vertical. See Abstract.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the position sensor of Socci et al to utilize the use of a tilt sensor using a photo interrupter, as per the teachings of Horiuchi et al, since it would provide an alternative means of monitoring the angular position of the user's head during an event.

5. Claims 1, 2, 8-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Socci et al (6,331,168) in view of Horiuchi et al (JP 2000-55656 A).

Socci et al disclose head gear for detecting head motion and position and further disclose a position sensor for sensing the position of the head of the user and providing a signal indicative of the sensed head position; a processor connectable to the position sensor for receiving the signal indicative of the sensed head position, the processor determining if the head of the user has been in an unsafe position for a first continuous period of time and producing a signal qualifying the determination; an indicator connectable to the processor for receiving the signal qualifying the determination and subsequently indicating that the head of the user is in an unsafe position; an activator for switching the electronic safety device between an active mode, in which the

electronic safety device operates to monitor of the head position of the user, and a standby mode, in which the electronic safety device does not monitor of the head position of the user; a piezo element operable to create an alarm; the indicator includes at least one of an audible indicator, a visual indicator and a vibration indicator; the processor further determines if the head of the first participant has been in an unsafe position for a second continuous duration of time, which is longer than the first continuous duration of time, and producing a signal for the indicator to stop indicating if the head has been in the unsafe position for the second continuous duration of time (the auto off feature of Socci et al would turn off the device if the processor has determined the device has not moved in a predetermined period of time); sensing an unsafe head tilt of the first participant; determining if the sensed unsafe head tilt has been maintained for at least a first continuous duration of time; indicating to one of the first and second participants that the head tilt of the first participant is unsafe; stopping the indicating after a second continuous duration of time (the auto off feature of Socci et al would turn off the device if the processor has determined the device has not moved in a predetermined period of time); stopping the sensing, determining and indicating after a second continuous duration of time (the auto off feature of Socci et al would turn off the device if the processor has determined the device has not moved in a predetermined period of time); re-starting the sensing, determining and indicating after a third continuous duration of time (the device goes into a "sleep" mode if the processor determines the device is not in use; one of ordinary skill in the art would recognize a device in "sleep" mode can be awakened, thus restarting the measurement);

determining whether or not the electronic safety device is in use; maintaining an active mode for the electronic safety device, if it is determined that the electronic safety device is in use; and determining if the device is in motion. See whole document, in particular, Column 3, lines 35-45; Column 4, lines 22-39; Column 6, lines 23-24 and 66-67; Column 7, lines 40-44; Column 8, lines 39-53; Column 9, lines 61-67; Column 10, line 42-Column 11, line 20 disclose hockey helmets; Column 11, line 43-Column 12, line 5 disclose football helmets; and Column 14, lines 6-18 disclose skating helmets.

Socci et al, while disclosing the use of a position sensor, however fail to disclose the use of a photo interrupter incorporated in the position sensor and being operable to sense a tilt of the sensor beyond a threshold angle relative to the vertical.

Horiuchi et al disclose the use of a tilt sensor and further disclose a photo interrupter incorporated in the position sensor and being operable to sense a tilt of the sensor beyond a threshold angle relative to the vertical. See Abstract.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the position sensor of Socci et al to utilize the use of a tilt sensor using a photo interrupter, as per the teachings of Horiuchi et al, since it would provide an alternative means of monitoring the angular position of the user's head during an event.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Socci et al (5,916,181) and Horiuchi et al (JP 2000-55656 A) as applied to claim 15 above, and further in view of Tilley et al (2004/0206609 A1).

Socci et al and Horiuchi et al, as discussed above, disclose a means for monitoring head position and further disclose the use of different ways to turn the device on and off, but fail to disclose the use of a photoelectric switch to operate the device by determining if sufficient ambient light is being received by the device from the surrounding environment.

Tilley et al disclose an electronic timer with a photosensor, and further disclose the use of a photoelectric switch to operate the device by determining if sufficient ambient light is being received by the device from the surrounding environment. See Paragraph 0008.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Socci et al and Horiuchi et al to include the use of a photoelectric switch, as per the teachings of Tilley et al, since it would provide a means of automatically turning off the sensing devices when the devices are stored in the dark and being unused.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Socci et al (6,331,168) and Horiuchi et al (JP 2000-55656 A) as applied to claim 15 above, and further in view of Tilley et al (2004/0206609 A1).

Socci et al and Horiuchi et al, as discussed above, disclose a means for monitoring head position and further disclose the use of different ways to turn the device on and off, but fail to disclose the use of a photoelectric switch to operate the device by determining if sufficient ambient light is being received by the device from the surrounding environment.

Tilley et al disclose an electronic timer with a photosensor, and further disclose the use of a photoelectric switch to operate the device by determining if sufficient ambient light is being received by the device from the surrounding environment. See Paragraph 0008.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Socci et al and Horiuchi et al to include the use of a photoelectric switch, as per the teachings of Tilley et al, since it would provide a means of automatically turning off the sensing devices when the devices are stored in the dark and being unused.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 2 and 8-18 have been considered but are moot because the arguments do not apply to any of the references being used in the current rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Szmal whose telephone number is (571)272-4733. The examiner can normally be reached on Monday-Friday, with second Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian Szmal/
Primary Examiner, Art Unit 3736